

BEFORE THE DIVISION OF WATER RIGHTS

<p>In The Matter Of:</p> <p style="text-align: center;">Gino Foianini</p> <p style="text-align: center;">Hanks Family Ranch Limited Partnership</p> <p style="text-align: center;">Rita Condos/Legal Agent</p> <p style="text-align: center;">RESPONDENTS</p>	<p style="text-align: center;">MEASURING DEVICE AND CONTROL STRUCTURE NOTICE</p> <p style="text-align: center;">SEAA No. 1404</p> <p style="text-align: center;">DISTRIBUTION ACCOUNTS: 102864, 103088.</p> <p style="text-align: center;">WATER RIGHTS: 41-1510, 1511, 1512, 3445 and 3481</p>
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I. AUTHORITY

The Division of Water Rights ("Division") issues this Notice under UTAH CODE ANN. § 73-5-4 (2008), and in accordance with UTAH ADMIN. CODE R. 655-15 (2008).

U.C.A. § 73-5-4 states in part :

(1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, ... shall construct or install and maintain controlling works and a measuring device at:

(a) each location where water is diverted from a source; and

(b) any other location required by the state engineer.

(2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.

(3) The state engineer shall approve the design of:

(a) the measuring device; and

(b) controlling works so that the state engineer or a water commissioner may regulate and lock the works. ...

(6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:

(a) forbid the use of water until the user complies with the state engineer's requirement; and

(b) commence enforcement proceedings authorized by Section 73-2-25.

II. STATEMENT OF FACTS

1. The Respondents divert water from the Middle Fork of Beaver Creek under Utah Water Right Numbers: 41-1510, 41-1511, 41-1512, 41-3445 and 41-3481.

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2. The Respondents own a 2-ft Parshall Flume that is required and used by the water commissioner to measure the water diverted into the Middle Gregory Beaver Canal on Middle Fork Beaver Creek.
3. This flume is located on the Middle Gregory Beaver Canal a few yards downstream from the road crossing near the point of diversion.
4. The approach channel above the flume is too steep so it does not enable the flow of water to slow down sufficiently before entering the flume. Higher flow velocities cause problems with the operation of the flume, making it difficult to obtain an accurate and reliable water measurement.

III. ACTIONS REQUIRED

1. The Respondents must keep debris cleaned from the canal near the flume to prevent undesirable flow restrictions and turbulence that causes problems obtaining reliable water measurements.
2. The velocity of the water entering the flume needs to be reduced. There are primarily two actions that could reduce the upstream velocity. The Respondents must implement one or both of these, or other acceptable actions, to enable an accurate water measurement of the diversion.
 - a. The ditch/canal channel above the flume can be deepened and widened to reduce the channel slope. This should occur for a minimum distance of about 8-10 yards upstream from the flume in order to effectively reduce the velocity of the flow entering the flume. The deepened channel section will likely fill with sediment during high flows so maintenance (cleaning) is typically periodically required in order for the flume to perform properly.
 - b. Raising the flume higher in the same location will also reduce the upstream channel slope and/or approach velocity. If this option is selected, the flume must be re-installed properly. This usually consists of the flume being level and the channel being sealed around the flume so there is no leakage around the flume. Periodic maintenance (cleaning) is typically required in the upstream channel to maintain proper operation.
3. **The work must be completed before April 15, 2011.**

IV. ADDITIONAL AGENCY ACTION

1. The Respondents are encouraged to diligently attend to the work required by this Notice. If the work is satisfactorily completed in a timely manner, the Division will conclude this agency action.

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2. If the work is not satisfactorily completed in a timely manner, the Division may issue an Order forbidding the use of water until the Respondents have complied, or may commence an enforcement action as allowed under Utah Code Ann. § 73-5-4 (5).
3. If an Order forbidding the use of water is issued and is violated by the Respondents, the Division may commence an enforcement action in accordance with Utah Code Ann. § 73-2-25 (2008).
4. If determined to be in violation an Order, the Respondents may be subject to administrative penalties in accordance with Utah Code Ann. § 73-2-26 (2005), including fines not to exceed \$5,000 per day for knowing violations or \$1,000 per day for unknowing violations and replacement of up to 200% of water diverted without right. In addition, the Respondents may be liable for expenses incurred by the Division in investigating and stopping the violation.

V. FURTHER INFORMATION

If the Respondents have any questions concerning this Notice, state laws and rules, or the required and recommended action, please discuss them with:

Robert W. Leake, P.E.
Regional Engineer
Vernal Office/Eastern Region
Utah Division of Water Rights
(435) 781-5327
State and County Building
152 E 100 N
Vernal, UT 84078-2126

Ben Anderson, P.E.
Water Rights Distribution Engineer
Utah Division of Water Rights
(801) 538-7469
1594 W North Temple Ste 220
P.O. Box 166300
Salt Lake City, UT 84104-6300

Dated this 7th day of September, 2010



Ben Anderson, P.E.
Water Rights Distribution Engineer

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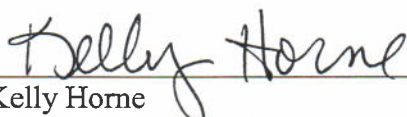
CERTIFICATE OF MAILING

I, the undersigned, certify that on this 7th day of September 2010, I mailed a copy of the foregoing Notice by regular U.S. Mail, delivery confirmation receipt requested, to the following:

Gino Foianini
1248 CO RD 238
Lyman, WY 82937

Hanks Family Ranch Limited Partnership
HCR 65 Box 732
McKinnon, WY 82938


Rita Condos
Legal Agent
1237 West 150 North
Vernal, UT 84078



Kelly Horne
Field Services Secretary
Utah Division of Water Rights

cc: Robert Leake, Regional Engineer
Todd Covolo, Water Commissioner

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PS Form 152, May 2002	PS Form 152, May 2002	PS Form 152, May 2002
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U.S. Postal ServiceTM Delivery ConfirmationTM Receipt Postage and Delivery Confirmation fees must be paid before mailing. Article Sent To: (to be completed by mailer) <i>Hanks Family Ranch LNTD Partnership</i> <i>HCR 65 Box 732, McKinnon, WY 82938</i>		